

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-095688

06/29/2011

HONORABLE LINDA A. AKERS

CLERK OF THE COURT
I. Ostrander
Deputy

LAS SENDAS COMMUNITY ASSOCIATION

CHARLES E MAXWELL

v.

JEFFREY M SHELTON, et al.

ROMAN A KOSTENKO

**ORDER TO SHOW CAUSE RETURN HEARING
BENCH TRIAL SET**

Courtroom 206 SEF

9:04 a.m. This is the time set for Order to Show Cause Return Hearing. Plaintiff Las Sendas Community Association is present and is represented by counsel, Charles E. Maxwell. Defendants Jeffrey M. Shelton, et. al., are not present but are represented by counsel, Roman A. Kostenko.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

LET THE RECORD REFLECT counsel for Defendants has provides to the Court a *Notice of Appearance*.

NOTE: Counsel are reminded that as of May 1, 2011, this case was **designated for mandatory e-filing**, which orders attorneys on the case to electronically file their documents. Continued failure to file documents electronically may result in documents being **rejected and not considered by the Court** until properly e-filed. Counsel are instructed to review Supreme

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Court Administrative Orders 2010-117 and 2011-10 to determine their **mandatory** participation in e-filing through AZTurboCourt.

Discussion is held.

IT IS ORDERED as follows:

1. **TRIAL**

This matter is set for a **Bench Trial** on **September 2, 2011, at 1:30 p.m.** in this division.

LENGTH OF TRIAL: 3.5 HOURS

HONORABLE LINDA A. AKERS
SOUTHEAST ADULT FACILITY
222 E. JAVELINA AVENUE
COURTROOM 206
MESA, ARIZONA 85210
(602) 506-1541

THIS IS A FIRM TRIAL SETTING.

2. **EXHIBITS**

A. MARKING EXHIBITS FOR TRIAL

Trial counsel are directed to personally meet **no later than August 2, 2011**, to discuss the exhibits prior to marking them for trial. Counsel shall attempt to agree on authenticity, foundation, and admission of the exhibits to shorten the time spent on exhibits during the trial.

Counsel shall present all exhibits, with a written list of brief exhibit descriptions, to the clerk **no later than August 26, 2011, at 5:00 p.m.** The exhibits will be marked in **consecutive** order -- Plaintiff's will be marked first and Defendant's will be marked second. Placeholders are not used and numbers will not be reserved for exhibits not presented at the date and time specified. Counsel shall make sure that they do not bring to the clerk a Plaintiff's set of exhibits and a Defendant's set of exhibits that include duplicate exhibits. **Counsel should note that depositions are not marked as exhibits.** Counsel shall present original depositions for filing at the

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same time that exhibits are presented. With regard to trial exhibits, counsel are strongly discouraged from marking exhibits they do not anticipate using during trial.

Failure to follow the procedure for submitting trial exhibits may result in the preclusion of that party's exhibits.

B. DEPOSITIONS

To the extent reasonably possible, depositions should be summarized.

Narrative summaries, with brief excerpts of deposition question and answer testimony, are preferred at trial rather than the reading of many pages of testimony.

Videotaped depositions shall be edited.

3. FINAL JOINT PRE-TRIAL STATEMENT

The Final Joint Pre-Trial Statement in accordance with Rule 16(d), A.R.Civ.P., is due in this division by **5:00 p.m. on August 26, 2011.**

In addition to the information required by Rule 16(d), A.R.Civ.P., counsel are to identify in the Joint Pre-Trial Statement all depositions or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony and the reason for such objections are also to be set forth therein.

Counsel shall deliver copies of the following also attached to the Joint Pre-Trial Statement:

- A. Proposed Findings of Fact and Conclusions of Law if a request has been or will be filed. If no proposed Findings of Fact and Conclusions of Law is received, the request shall be deemed waived.
- B. Any trial memoranda (optional) that the parties wish to submit should accompany the Final Joint Pre-Trial Statement.

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4. **WITNESS AND EXHIBIT LISTS**

The witness and exhibit lists shall contain no surprises. Any information sought by other discovery devices and revealed for the first time on the witness or exhibit lists will be inadmissible at trial.

Exhibit Procedures

- Depositions are not exhibits and will not be marked as such. Originals are to be delivered to the clerk prior to trial. Counsel are to use their copies of the depositions, as the Court retains the originals for reference.
- A list with a generic description of each exhibit should be provided. The list should contain the case number, caption, scheduled trial date, and should identify the party submitting the exhibits.
- Counsel shall provide a list of all exhibits that have been stipulated into evidence.
- Exhibits will be marked numerically and consecutively.
 - Plaintiff(s) exhibits will be marked, first followed by Defendant(s).
 - Numbers will **not** be skipped or “**saved**” in anticipation of additional exhibits to be submitted.
 - Subsections of exhibits will be marked as the next available number. Do **NOT** use subsections of exhibits (e.g., 4a or 4.1); use the next consecutive number.
- Each exhibit will be clipped or bound if too large to be stapled.
- Exhibits are to be separated by a colored sheet of paper or by a divider sheet.
- Blow-ups and large items may be used for demonstrative purposes; however, if they are to be marked as an exhibit, a photograph of 8 ½ x 11” size are preferred for marking as an exhibit. Please see the clerk if there are issues with this.
- Duplicate exhibits will **NOT** be marked.

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PLEASE CONFER REGARDING EXHIBITS TO INSURE THERE ARE NO
DUPLICATES.

- **ALL EXHIBITS ARE DUE AS LISTED ABOVE.**

**NOTE: ALL COURT PROCEEDINGS ARE RECORDED BY AUDIO METHOD
AND NOT BY A COURT REPORTER. ANY PARTY MAY REQUEST THE
PRESENCE OF A COURT REPORTER BY CONTACTING THIS DIVISION THREE
(3) COURT BUSINESS DAYS BEFORE THE SCHEDULED HEARING.**

9:22 a.m. Hearing concludes.

Later:

A **Trial Management Conference** is set for **August 29, 2011, at 9:15 a.m. (time
allotted: 15 minutes)** in this division.

ALERT: Efiling through AZTurboCourt.gov is mandatory in civil cases for attorney-
filed documents, effective May 1, 2011. See Arizona Supreme Court Administrative Orders
2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance
with this requirement after May 1, 2011.